

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

USA) (CRIMINAL ACTION NO.
v.) (4:17-CR-124
JAMES BRANDON BENNETT) (
) (
) (
) (JULY 16, 2018
) (10:00 A.M.

CHANGE OF PLEA HEARING

BEFORE THE HONORABLE JUDGE KIMBERLY C. PRIEST JOHNSON

UNITED STATES MAGISTRATE

APPEARANCES:

FOR THE GOVERNMENT: Mr. Ernest Gonzalez

FOR THE DEFENDANT: Mr. Selim Fiagome

COURT REPORTER: MS. SHAWNA GAUNTT-HICKS, CSR
Deputy Court Reporter
United States District Court
Eastern District of Texas
(903) 276-1090
CSR NO. 9353

(Proceedings recorded, transcript produced by a court
reporter.)

P R O C E E D I N G S

(Proceedings commence at 10:00 a.m.)

(Defendant present with counsel.)

THE COURT: Court calls Case Number 4:17-CR-124,
United States versus James Brandon Bennett.

MR. GONZALEZ: Your Honor, Ernest Gonzalez for the
Government. The Government's ready to proceed.

MR. FIAGOME: Your Honor, Selim Fiagome here on
behalf of James Brandon Bennett.

THE COURT: Good morning.

MR. FIAGOME: Good morning.

THE COURT: Mr. Bennett, please raise your right hand
to be sworn.

(Whereupon, the defendant was sworn.)

THE COURT: We're here today, sir, for your change of
plea hearing. Please state your full name and age for the
record.

THE DEFENDANT: James Brandon Bennett, 38.

THE COURT: What is the last grade of school you've
completed?

THE DEFENDANT: I graduated high school.

THE COURT: Have you ever been diagnosed with any
mental illness or problem?

1 THE DEFENDANT: Yes.

2 THE COURT: Tell me about that.

3 THE DEFENDANT: I'm manic schizophrenic.

4 THE COURT: Okay. How -- when did you receive that
5 diagnosis?

6 THE DEFENDANT: I believe it was ten years ago now.

7 THE COURT: Yeah. It doesn't have to be exact.

8 Have you been followed by a doctor?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. And are you on prescribed
11 medication?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Can you tell me what you take?

14 THE DEFENDANT: Zyprexa and Buspar.

15 THE COURT: All right. And you're receiving those
16 same medicines in jail?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. Is there anything about the
19 medications that you take that would cause you not to fully
20 understand what we're doing here today?

21 THE DEFENDANT: I don't think so.

22 THE COURT: Okay. Do you think that you understand
23 what you're here to do today?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. And other than those prescribed

1 medications, are you currently under the influence of any other
2 drug or alcohol?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Counsel, do you believe your client is
5 competent to proceed here today?

6 MR. FIAGOME: Yes, Your Honor.

7 THE COURT: All right.

8 Sir, you have the right to have your plea taken by
9 the district judge assigned to your case, or you can have me, a
10 United States magistrate judge, take your plea and make a
11 recommendation to the district court.

12 Do you understand that you have this right?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: I'm holding up your waiver and consent
15 form. Is that your signature on the bottom?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And did you review this document with
18 counsel before signing it?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Is it your desire to have me take your
21 plea here today and make a recommendation to the district
22 court?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. I find the waiver and consent
25 has been knowingly and voluntarily given.

1 Have you had an opportunity to fully review and
2 discuss this case with your counsel?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Are you satisfied with the advice and
5 representation you have been given?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right. You were charged with
8 violation of a federal criminal law in an indictment. Have you
9 received a copy of that indictment?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You have the right to have this
12 indictment read aloud into the record or you may waive that
13 right. What would you like to do?

14 MR. FIAGOME: Waive it.

15 THE DEFENDANT: Waive it.

16 THE COURT: Do you understand the nature of the
17 charges alleged against you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. I am going to ask
20 Mr. Gonzalez to read aloud the elements of the offense that
21 you're pleading guilty to. These are the elements the
22 Government would be required to prove beyond a reasonable doubt
23 to establish your guilt if you were to go to trial.

24 Mr. Gonzalez.

25 MR. GONZALEZ: Your Honor, the elements are as

1 follows: one, that the defendant and one or more persons in
2 some way or manner made an agreement to commit the crime
3 charged in the indictment -- that is, to possess with the
4 intent to manufacture and distribute 500 grams or more of a
5 mixture or substance containing detectable amounts of
6 methamphetamine or 50 grams or more of methamphetamine, actual;
7 two, that the defendant knew the unlawful purpose of the
8 agreement; three, that the defendant joined in the agreement
9 willfully -- that is, with the intent to further its unlawful
10 purpose; four, that the overall scope of the conspiracy
11 involved 500 grams or more of a mixture or substance containing
12 detectable amounts of methamphetamine or 50 grams or more of
13 methamphetamine, actual; and, five, that the defendant knew or
14 reasonably should have known that the scope of the conspiracy
15 involved 500 grams or more of a mixture or substance containing
16 detectable amounts of methamphetamine or 50 grams or more of
17 methamphetamine, actual.

18 THE COURT: Thank you.

19 Sir, do you understand that these are the elements
20 set forth?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And do you admit that you committed each
23 one of those elements?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right.

1 I've received a notice of plea and -- stating that
2 your intention is to plead guilty without a plea agreement. Is
3 that correct?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. All right.

6 I'm going to review some things with you, and then
7 we'll talk about the factual basis that was submitted.

8 Do you understand that you have the following
9 constitutional rights? You have the right to plead not guilty,
10 to have a trial by a jury, to have your guilt proved beyond a
11 reasonable doubt, to confront and cross-examine witnesses and
12 to call witnesses in your defense, and to not be compelled to
13 testify against yourself.

14 Do you understand that you have those rights?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. Do you understand that, if
17 you plead guilty to Count 1 of the indictment, you will waive
18 those constitutional rights?

19 (Discussion between defendant and counsel.)

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Are you sure? Essentially, there are
22 rights that you have to go to trial and make the Government
23 prove that you're guilty, and at trial you have the right to
24 call witnesses, and no one can force you to testify at trial.

25 So if you plead guilty here today, you're waiving all

1 of those rights because you're choosing not to go to trial and
2 admit your guilt.

3 Do you understand that?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. All right.

6 I'm going to advise you of the minimum and maximum
7 penalties that can be imposed in your case.

8 If 500 grams or more of a mixture or substance
9 containing a detectable amount of methamphetamine or if 50
10 grams or more of methamphetamine, actual, not less than 10
11 years and not more than life imprisonment, a fine not to exceed
12 \$10 million, or both; supervised release of at least 5 years;
13 and \$100 special assessment.

14 There also may be restitution, cost of incarceration,
15 and -- and forfeiture involved.

16 Do you understand those are the minimum and maximum
17 penalties that can be imposed in your case?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Do you also understand that,
20 in determining your sentence, the Court will refer to the
21 sentencing guidelines; however, those guidelines are not
22 binding upon the Court?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Have you had an opportunity to review
25 applicable guideline provisions and the range in your case with

1 your counsel?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Has anyone tried to force you or threaten
4 you to plead guilty in this case?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Are you pleading guilty only because you
7 are, in fact, guilty?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. If you'll look with me at the
10 factual basis that was submitted in this case.

11 Counsel, since this was submitted by you, can you
12 please summarize the factual basis?

13 MR. GONZALEZ: Yes.

14 MR. FIAGOME: Yes, Your Honor.

15 The defendant, James Brandon Bennett, is -- is
16 changing his plea to guilty. This plea is a result of -- of
17 discussions between Mr. Bennett and I. The events described
18 are in the Eastern District of Texas. The defendant,
19 James Brandon Bennett -- Bennett, and one or more persons, in
20 some manner, made an agreement to commit the crime charged in
21 Count 1 of the indictment, to knowingly and intentionally
22 possess with the intent to distribute and manufacture at least
23 15 kilograms but less than 45 kilograms of a mixture or
24 substance containing a detectable amount of methamphetamine or
25 at least 1.5 kilograms but less than 4.5 kilograms of

1 methamphetamine actual.

2 Mr. Bennett knew the unlawful purpose of the
3 agreement and joined in it with the intent to further it.

4 Mr. Bennett knew of the amount involved during the
5 term of the conspiracy involved at least 1.5 -- I'm sorry -- 15
6 kilograms but less than 45 kilograms of methamphetamine or a
7 mixture or -- of methamphetamine or at least 1.5 to 4.5
8 kilograms of methamphetamine, actual.

9 This amount involved the conspiracy. After the
10 defendant entered the conspiracy, it was reasonably forceable
11 to the defendant as part of the jointly undertaken activity.

12 The -- the defendant, Mr. Bennett -- his role in the
13 conspiracy was to supply a conspirator with kilogram quantities
14 of methamphetamine from various sources. In the -- in the
15 version submitted to the Court, it's stricken -- "imported from
16 Mexico" -- which would be distributed to other co- --
17 coconspirators within the Eastern District.

18 The defendant's signature acknowledgment is also
19 signed on the document, Your Honor, as well as his counsel.

20 THE COURT: All right. In the -- the copy that I've
21 got, in addition to "which was imported from Mexico" being
22 stricken, it also looks like the word "kilogram" quantities.
23 So it would just read "Bennett's role in the conspiracy was to
24 supply coconspirators with quantities of methamphetamine"; is
25 that correct?

1 MR. FIAGOME: That is correct, Your Honor.

2 THE COURT: Okay. And is that Mr. Gonzalez's
3 initials by those two changes?

4 MR. GONZALEZ: Yes, Your Honor.

5 THE COURT: Okay. All right.

6 Mr. Gonzalez, in addition to these two changes, do
7 you agree that all of the factual elements are met by this
8 factual basis?

9 MR. GONZALEZ: Yes, Your Honor.

10 THE COURT: Okay. All right.

11 Mr. Bennett, is everything in the factual basis true
12 and correct?

13 (Discussion between defendant and counsel.)

14 THE DEFENDANT: Yes. Yes, ma'am.

15 THE COURT: All right. Is that your signature on
16 Page 2?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And did you review this document with
19 counsel before signing it?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Are there any changes you
22 want to make to it at this time? And -- and let me just tell
23 you, if you've got questions about this, you need to ask them
24 now because, once your -- your plea of guilty is entered, it's
25 difficult to change it.

1 (Discussion between defendant and counsel.)

2 MR. FIAGOME: Your -- Your Honor, may -- may I take a
3 moment with Mr. Bennett?

4 THE COURT: Do you want me to move on to the next
5 case and come back to you?

6 (Discussion between defendant and counsel.)

7 MR. FIAGOME: Yes, Your Honor.

8 THE COURT: Okay.

9 (Proceedings temporarily passed.)

10 THE COURT: All right. We're back on the record,
11 4:17-CR-124.

12 Mr. Bennett, you're still under oath. Are you
13 prepared to -- to resume our conversation about your factual
14 basis?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right. I think the question we had
17 left off with, I had asked you if everything was correct in it,
18 and you said yes. And then I asked you if there's any changes
19 you wanted to make to it, and I -- I think I didn't get an
20 answer to that question.

21 THE DEFENDANT: No, ma'am. I don't want to make any
22 changes to it.

23 THE COURT: Okay. Did you get your questions
24 answered about the factual basis?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And are you comfortable with everything
2 that's in it?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. Let me ask you, in your own words,
5 please summarize the criminal conduct that you're pleading
6 guilty to. Just tell me in your own words what you did.

7 THE DEFENDANT: I bought and sold drugs.

8 THE COURT: With at least one other person?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Do you agree that you knew
11 that the group you were selling drugs with was 15 kilograms --
12 or at least 15 kilograms but less than 45 kilograms of a
13 mixture of substance containing a detectable amount of
14 methamphetamine?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. What did you think the amount of
19 the conspiracy involved?

20 THE DEFENDANT: I thought it was 5 to 50 -- or 50 to
21 500.

22 THE COURT: Okay. Well, then, but that's a problem
23 for you -- right? -- because that's not what your factual basis
24 says.

25 (Discussion between defendant and counsel.)

1 MR. FIAGOME: Your Honor, may -- may I take a moment
2 to speak...

3 (Discussion between defendant and counsel.)

4 MR. FIAGOME: Your -- Your Honor, in my conversations
5 with the defendant, in reviewing the facts with him, we -- we
6 focused on the 1.5 to 4.5 of actual; so that may be his
7 confusion. Because we went over the -- the transactions and
8 numbers with him, and we went over the lab results. And I
9 explained to him that all we have to prove is 1.5, and he
10 acknowledged that that 1.5, he would -- he would take
11 responsibility for.

12 So maybe he didn't understand the question.

13 THE COURT: And it was actual?

14 MR. FIAGOME: It was actual, yes.

15 THE COURT: Okay. All right.

16 So let me see if I can help make sure that's the only
17 issue.

18 Within the statute, that -- there is a difference
19 between what may have only a little bit of methamphetamine
20 contained in it along with other substances versus something
21 that is pure methamphetamine. So the amounts are essentially
22 equivalent in the statute when you say "15 kilograms but less
23 than 45 kilograms of a mixture or substance containing a
24 detectable amount of methamphetamine or at least 1.5 kilograms
25 but less than 4.5 kilograms of actual methamphetamine."

1 So those essentially are two -- the same thing.

2 THE DEFENDANT: Okay.

3 THE COURT: And so it -- what Mr. Gonzalez is
4 representing -- that I guess the evidence in your case is that
5 it was actual methamphetamine. And if that's correct, then the
6 amounts we're talking about for your case are 1.5 kilograms --
7 at least 1.5 kilograms but less than 4.5 kilograms of actual
8 methamphetamine.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Does that make sense?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. So I guess the -- the proper
13 question for you then is did you know that the -- the one or
14 more persons that you were distributing methamphetamine with,
15 that that whole group involved at least 1.5 kilograms of actual
16 methamphetamine?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. And then you admit that your role
19 in that group was to supply others with quantities of
20 methamphetamine?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay.

23 Are both counsel satisfied that there's a factual
24 basis to support the plea?

25 MR. GONZALEZ: Yes, Your Honor.

1 MR. FIAGOME: Yes, Your Honor.

2 THE COURT: All right.

3 Counsel, let me ask you specifically, have you had an
4 opportunity to fully review the evidence and discuss this case
5 with your client?

6 MR. FIAGOME: Yes, Your Honor.

7 THE COURT: And do you join in this decision to plead
8 guilty today?

9 MR. FIAGOME: Yes, Your Honor.

10 THE COURT: Mr. Bennett, then I'll ask you, with
11 respect to Count 1 of the indictment, which charges a violation
12 of 21 United States Code 846 conspiracy to possess with the
13 intent to distribute a mixture or substance containing a
14 detectable amount of methamphetamine, how do you plead? Guilty
15 or not guilty?

16 THE DEFENDANT: Guilty.

17 THE COURT: I'll accept your plea of guilty and make
18 the following findings on the record.

19 The Court finds that you are competent to plead and
20 you have had assistance of counsel. You understand your trial
21 rights, and you understand the nature of the charges alleged
22 against you. You understand the minimum and maximum penalties
23 that can be imposed in your case and that the Court will refer
24 to the sentencing guidelines in determining your sentence, but
25 those guidelines are not binding upon the Court.

1 I find that your plea is knowing and voluntary, and
2 that there is a factual basis to support the plea.

3 So I will recommend that the district court accept
4 your plea of guilty. You'll have 14 days to make any objection
5 to that recommendation.

6 At this time, sir, you're going to be remanded to the
7 custody of the United States Marshal pending your sentencing
8 hearing in this case.

9 You'll -- prior to your sentencing hearing, you'll be
10 interviewed by a probation officer. They'll prepare what's
11 called a presentence report. You'll have an opportunity to
12 review that report with your counsel and make objections to it.

13 The district court will refer both to the report as
14 well as any objections you make in determining your sentence.

15 Do you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Anything further from counsel?

18 MR. GONZALEZ: Not from the Government, Your Honor.

19 Thank you.

20 MR. FIAGOME: No, Your Honor.

21 THE COURT: All right. We'll stand adjourned in this
22 case.

23 (End of proceedings.)
24
25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript from
the recording of proceedings in the above-entitled matter."

/s/ Shawna Gauntt-Hicks
Shawna Gauntt-Hicks
Court Reporter
State of Texas No. 9353
Expiration Date: 12/31/2019

12/20/2018
Date